

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

FRACTUS, S.A., <i>Plaintiff,</i> v. AT&T MOBILITY LLC,	§ § § § § § § §	CIVIL ACTION NO. 2:18-CV-00135-JRG LEAD CASE
SPRINT COMMUNICATIONS COMPANY, L.P., SPRINT SPECTRUM, L.P., SPRINT SOLUTIONS, INC., NEXTEL OPERATIONS, INC.,	§ § § § §	CIVIL ACTION NO. 2:18-CV-00136-JRG MEMBER CASE
T-MOBILE US, INC., T-MOBILE USA, INC.,	§ § § §	CIVIL ACTION NO. 2:18-CV-00137-JRG MEMBER CASE
VERIZON COMMUNICATIONS INC., CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS, <i>Defendants.</i>	§ § § § § §	CIVIL ACTION NO. 2:18-CV-00138-JRG MEMBER CASE

ORDER FOCUSING PATENT CLAIMS AND PRIOR ART TO REDUCE COSTS

The Court **ORDERS** as follows:

1. This Order supplements all other discovery rules and orders. It streamlines the issues in this case to promote a “just, speedy, and inexpensive determination” of this action, as required by Federal Rule of Civil Procedure 1.

Phased Limits on Asserted Claims and Prior Art References

2. By the date set for the opening claim construction brief pursuant to P.R. 4-5(a), Plaintiff Fractus, S.A. (“Fractus”) shall serve a Preliminary Election of Asserted Claims, which shall assert, from among those claims previously identified by Fractus pursuant to P.R. 3-1(a), no more than ten (10) claims from each patent and not more than a total of

thirty-two (32) claims across the Related Cases.¹ Not later than 14 days after the deadline for service of the Preliminary Election of Asserted Claims, Defendants² shall serve a Preliminary Election of Asserted Prior Art, which shall assert no more than twelve (12) prior art references against each patent and not more than a total of sixty (60) references across the Related cases.^{3,4}

3. Not later than twenty-eight (28) days before the deadline for service of expert reports by the party (or parties) with the burden of proof on an issue, Fractus shall serve a Final Election of Asserted Claims, which shall identify for each Carrier Case⁵ no more than five (5) asserted claims per patent from among the previously identified claims in the Preliminary Election of Asserted Claims, and no more than a total of sixteen (16) claims across the Related Cases. For purposes of this Final Election of Asserted Claims, Fractus will identify the same set of claims across these Related Cases for any particular accused antenna product and its insubstantial variants. By the date set for the service of expert reports by the party (or parties) with the burden of proof on an issue, the Defendant Group⁶ in each Carrier Case shall jointly serve, on a Carrier Case by Carrier

¹ For purposes of this Order, “Related Cases” refers collectively to the lead case—2:18-cv-135—and three member cases—2:18-cv-136, 2:18-cv-137, and 2:18-cv-138—as shown above.

² For purposes of this Order, “Defendants” refers collectively to AT&T Mobility LLC; Sprint Communications Company, L.P., Sprint Spectrum, L.P., Sprint Solutions, Inc. and Nextel Operations, Inc. (collectively, “Sprint”); T-Mobile US, Inc. and T-Mobile USA, Inc. (collectively, “T-Mobile”); Cellco Partnership d/b/a/ Verizon Wireless; Intervenor-Defendant CommScope Technologies LLC; and Intervenor-Defendant CellMax Technologies AB.

³ For purposes of this Order, a prior art instrumentality (such as a device or process) and associated references that describe that instrumentality shall count as one reference, as shall the closely related work of a single prior artist.

⁴ For purposes of this Order, the asserted patent families are defined as: (1) the “IMBA Asserted Patents” (U.S. Patent Nos. 6,937,191; 7,250,918; 7,557,768; 7,932,870; 8,228,256; 8,896,493; and 9,905,940); and (2) the “STBA Asserted Patents” (U.S. Patent Nos. 8,497,814; 8,754,824; and 9,450,305).

⁵ For purposes of this Order, a “Carrier Case” refers individually to Case Nos. 2:18-cv-135, -136, -137, or -138.

⁶ For purposes of this Order, a “Defendant Group” refers to the defendant carrier and corresponding intervenor-

Case basis, a Final Election of Asserted Prior Art, which shall identify no more than eight (8) asserted prior art references per patent from among the prior art references previously identified in the Preliminary Election of Asserted Prior Art for a particular patent and no more than a total of thirty-two (32) prior art references across the Related Cases. For purposes of this Final Election of Asserted Prior Art, each obviousness combination shall count as a separate prior art reference. For purposes of this Final Election of Asserted Prior Art, if Fractus asserts a claim against one or more Defendant Group(s) that is not asserted against all Defendant Groups, the Defendant Group(s) against whom the claim is asserted may elect one additional prior art reference for that patent.

4. Should Fractus decide to assert infringement of only one (1) patent, all per-patent limits in this Order are increased by 50%, rounding up.


Modification of this Order

5. Subject to Court approval, the parties may suggest a subsequent modification of this Order by agreement, but they should endeavor to limit the asserted claims and prior art references to the greatest extent possible. Absent agreement, post-entry motions to modify this Order's numerical limits on asserted claims and prior art references must demonstrate material good cause warranting such modification. Motions to modify other portions of this Order are committed to the sound discretion of the Court.⁷

defendants in a single Carrier Case. For example, the Defendant Group in Case No. 2:18-cv-135 includes Defendant AT&T Mobility LLC, Intervenor-Defendant CommScope Technologies LLC, and Intervenor -Defendant CellMax Technologies AB.

⁷ This Order contemplates that the parties and the Court may further narrow the issues during pretrial proceedings in order to present a manageable case at trial.

So ORDERED and SIGNED this 6th day of February, 2019.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE